

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY E. LOEHR, SR.,

Plaintiff-Appellee,

v

WISCONSIN CENTRAL, LTD., and
CANADIAN NATIONAL RAILWAY CO.,

Defendants,

and

SAULT STE. MARIE BRIDGE CO.,

Defendant-Appellant.

UNPUBLISHED

October 21, 2004

No. 248490

Delta Circuit Court

LC No. 02-016430-NO

Before: Murphy, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant Sault Ste. Marie Bridge Company (“SSAM”) appeals by leave granted from an order of the circuit court denying partial summary disposition. SSAM had sought summary disposition on the basis that plaintiff’s claim concerning knee injuries allegedly sustained while employed by SSAM was barred by the statute of limitations. We reverse and remand.

Defendant SSAM’s sole argument on appeal is that the trial court did not apply the correct law in determining when the statute of limitations accrued in this case. We agree. This Court reviews a trial court’s grant or denial of summary disposition under a de novo standard. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

45 USC 56 provides that claims brought under the Federal Employers’ Liability Act (FELA), 45 USC 51 *et seq.*, must be commenced within three years from the day the cause of action accrued. The trial court relied on *Vaughan v Grand Trunk W R Co*, 153 Mich App 575; 396 NW2d 440 (1986), which concluded that the continuing tort rule governed the accrual of the statute of limitations in such cases. *Id.* at 578. Under this rule, the cause of action accrued only at such time as the employer ceased its ongoing tortious conduct. *Id.*

Recently, however, this Court rejected the reasoning of *Vaughan*. In *Hughes v Lake Superior & I R Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 246260, issued August 24,

2004), this Court held that the proper standard for determining the accrual of FELA claims, including those claims based on a theory of negligent assignment, is the discovery rule. *Id.* at slip op p 7. In the employment context, “[t]he relevant inquiry under the discovery rule is when the plaintiff knew or should have known that there was a potential causal connection between his employment and his injury, not when he knew that the repetitive exposure to the cause was the specific cause of that injury.” *Id.*

In the present case, there is evidence that plaintiff knew or had reason to know of the existence and cause of his knee injury as early as 1985, and possibly as early as 1981. Thus, his cause of action under FELA accrued at the latest in 1985. *Hughes, supra*. However, plaintiff did not file his claim under FELA until January 2002. Accordingly, pursuant to 45 USC 56, plaintiff’s claim for his knee injuries was barred by the statute of limitations. As a result, summary disposition under MCR 2.116(C)(7) was appropriate as to plaintiff’s claim against SSAM.

Reversed and remanded for entry of an order granting SSAM summary disposition under MCR 2.116(C)(7). We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Jane E. Markey